

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

Toua Hong Chang,

Civil No. 06-1590 (PAM/JSM)

Petitioner,

v.

**MEMORANDUM AND ORDER**

State of Minnesota,

Respondent.

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This matter is before the Court on Petitioner's Motion for a Certificate of Appealability ("COA").

A state prisoner may not appeal an order denying a petition for a writ of habeas corpus without a certificate of appealability. 28 U.S.C. § 2253(c)(1). To obtain a certificate, a petitioner "must show more than just good faith or an absence of frivolity." Flieger v. Delo, 16 F.3d 878, 882-83 (8th Cir. 1994) (citation omitted). Instead, the petitioner must show that the issues raised "are debatable among reasonable jurists, a court could resolve the issues differently, or the issues deserve further proceedings." Id. (citation omitted).

In his habeas corpus petition, Petitioner claimed that he was denied his Sixth Amendment right to confrontation. In particular, he challenged the admission of a non-testifying witness's statement to the police, asserting that the statement was used as substantive evidence to corroborate another witness's testimony. The Court found that the statement was properly admitted because the statement was offered in rebuttal for impeachment purposes and therefore not hearsay. See Tennessee v. Street, 471 U.S. 409,

417 (1985).

The Court remains convinced that admission of the statement was proper and denial of the petition was correct. Nonetheless, the Court recognizes that another court could determine that admission of the statement violated Petitioner's right to confrontation. Accordingly, **IT IS HEREBY ORDERED** that Petitioner's Motion for a Certificate of Appealability (Clerk Doc. No. 30) is **GRANTED**.

Dated: May 21, 2007

s/ Paul A. Magnuson

Paul A. Magnuson  
United States District Court Judge